

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF DELAWARE
VOLUME 8

IN THE MATTER OF INTEGRATED :
RESOURCE PLANNING FOR THE PROVISION :
OF STANDARD OFFER SUPPLY SERVICE BY :
DELMARVA POWER & LIGHT COMPANY : PSC DOCKET
UNDER 26 DEL. C. S. 1007(c) & (d) : NO. 06-241
REVIEW AND APPROVAL OF THE REQUEST :
FOR PROPOSALS FOR THE CONSTRUCTION :
OF NEW GENERATION RESOURCES UNDER :
26 DEL. C. S. 1007(d) :
(Opened July 25, 2006) :

Public Service Commission Hearing taken
pursuant to notice before Debra A. Donnelly, Registered
Professional Reporter, in the offices of the Public
Service Commission, 861 Silver Lake Boulevard, Cannon
Building, Suite 100, Dover, Delaware, on Tuesday,
January 23, 2007, beginning at approximately 1:00 p.m.,
there being present:

APPEARANCES:

On behalf of the Public Service Commission:
ARNETTA McRAE, CHAIR
J. DALLAS WINSLOW, COMMISSIONER
JAY LESTER, COMMISSIONER
JOANN CONAWAY, COMMISSIONER
JEFFREY CLARK, COMMISSIONER

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1 APPEARANCES CONTINUED:

2 On behalf of the Public Service Commission Staff:
GARY A. MYERS, ESQUIRE

3 On behalf of the Public Service Commission Staff:
4 JAMES McC. GEDDES, ESQUIRE

5 On behalf of the Public Service Commission Staff:
6 BRUCE H. BURCAT, EXECUTIVE DIRECTOR
KAREN J. NICKERSON, SECRETARY

7 On behalf of the Office of the Public Advocate:
8 G. ARTHUR PADMORE
JOHN CITROLO

9 On behalf of Department of Natural Resources and
10 Environmental Control:
PHILIP J. CHERRY

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1 CHAIR McRAE: We had put off items 3 and
2 4 on the agenda while we were waiting for Mr. Cherry from
3 DNREC to arrive, and now that he's here, we will go back
4 to items 3 and 4 on the agenda.

5 This one Staff is Mr. Geddes.

6 MR. GEDDES: Madam Chair, members of the
7 Commission, this is the time for you to consider the
8 findings and opinions supplementing Order No. 7106,
9 involving the RFP in Docket 06-241.

10 You will recall there was a petition for
11 reconsideration filed by doctors or professors Firestone
12 and Kempton, which the Commission heard on the 19th, and
13 after argument of the petition for reconsideration, the
14 Commission in its deliberations determined that it would
15 not grant the petition.

16 And this Order memorializes the reasons
17 that the Commission gave on that day as to why the
18 petition should not be granted. And so it would
19 supplement your earlier Order.

20 And, obviously, Mr. Cherry was involved
21 in that process, so his thoughts and feelings about
22 whether this Order properly memorializes those
23 deliberations should be considered on the record as well.
24 And Staff supports this for your favorable consideration.

1 CHAIR McRAE: I did, I had a question on
2 page 7 of the Order, on the second line where it talks
3 about alternatively, is that they would assume
4 compliance, it says other than those not in the nature of
5 a tax. But isn't the alternative in the nature of a tax?
6 They could assume it all?

7 MR. GEDDES: Yes, they could do it
8 either way.

9 CHAIR McRAE: Right. Or those in the
10 nature, they would assume everything other than those in
11 the nature of a tax.

12 MR. GEDDES: Correct.

13 CHAIR McRAE: But this says other than
14 those not in the nature of a tax.

15 MR. CHERRY: Madam Chair, that's a very
16 good observation. I think that you are exactly right.

17 CHAIR McRAE: Well, I just --

18 MR. GEDDES: So perhaps we should modify
19 that.

20 I would suggest that we make that
21 change, that you sign the Order and we make the change
22 and file it as part of the original.

23 CHAIR McRAE: Okay. There was one other
24 comment I wanted to make with regard to the Order. And I

1 understand that the end point is the same, but on page 8,
2 and there was mention of the fact that it is not material
3 whether the other parties had access to the comments.

4 And the one observation I want to make on that is that
5 sometimes the Commission can be informed by comments of
6 people other than individuals making the comments. So I
7 understand what you are saying with respect to the bottom
8 line, but I do -- I do want to suggest caution in that
9 sometimes parties can help to further clarify points that
10 have not necessarily been made by them.

11 MR. GEDDES: I would agree. But I think
12 the sense of this was that those comments, although not
13 specifically considered as part of the red-line, were
14 considered.

15 CHAIR McRAE: I understand.

16 MR. GEDDES: So I think the idea was,
17 yes, technically there is a technical argument, and there
18 is the substantive argument as well.

19 CHAIR McRAE: Right. And I was just
20 noting that with respect to the overall --

21 MR. GEDDES: Right.

22 CHAIR McRAE -- response of the
23 Commission. With respect to this Order, that's perfectly
24 fine, but I don't want to convey the impression that the

1 iterative process with multiple parties, you know, its
2 value is substantial. In this it does not affect my
3 response to the Order.

4 MR. GEDDES: And under the APA, the
5 Commission is required to consider it. And your Hearing
6 Examiners routinely summarize those comments, because
7 they are not evidence, but they are still comments that
8 need to be considered as part of a process in whatever
9 the Commission ultimately determines. And there
10 obviously is case law out there that you cannot rely
11 purely on comments because they are not evidence, but
12 they clearly are part of the process.

13 CHAIR McRAE: All right. So that's just
14 a point I really thought I would bring to the table in
15 connection with the Order.

16 Commissioners? And --

17 MR. CHERRY: Thank you, Madam Chairman.

18 Just going back to your previous
19 comment, top of page 7, how were you going to alter that
20 language? Are you going to strike "other than those" or
21 are you going to strike "not"?

22 MR. GEDDES: I was going to strike
23 "not," unless somebody has a better solution.

24 CHAIR McRAE: That was my suggestion,

1 not.

2 MR. GEDDES: Is that satisfactory with
3 you?

4 MR. CHERRY: It doesn't matter.

5 CHAIR McRAE: We have got agreement with
6 at least one other agency. We better jump on this and
7 get this Order done.

8 MR. CHERRY: Well, much of this, correct
9 me if I'm wrong, but much of this language is exactly as
10 was found in the independent consultant's report, is it
11 not?

12 MR. GEDDES: Correct. Which was
13 approved by --

14 MR. CHERRY: We might want to go back
15 and make sure that -- I don't know how you fix that
16 report, or if it's even worthy of going back and
17 tinkering with it. But this same typo might actually
18 appear in there as well.

19 MR. GEDDES: Mr. Sheingold have a typo
20 in his report?

21 MR. CHERRY: I dare say it's possible,
22 given the 3,000 pages.

23 MR. GEDDES: I am happy to go back and
24 see if the report reflects that particular issue as

1 depicted here.

2 MR. CHERRY: I do think it's critical we
3 get this language right.

4 MR. GEDDES: And I will endeavor --

5 MR. MYERS: (Inaudible.)

6 MR. GEDDES: Thank you, Mr. MYERS. That
7 was helpful.

8 And I will make sure that what needs to
9 be corrected is brought to the attention of the
10 appropriate parties.

11 CHAIR McRAE: Are there any other
12 comments?

13 If not, we do have Order No. 7106,
14 noting that we will make the appropriate adjustment of
15 choice by our Staff counsel. Can I have a motion?

16 COMMISSIONER CLARK: Madam Chair, I move
17 that the Commission and the Energy Office adopt Order
18 No. 7106 with the change mentioned on page No. 7.

19 COMMISSIONER CONAWAY: Second the
20 motion.

21 CHAIR McRAE: All in favor.

22 CHAIR McRAE: Aye.

23 COMMISSIONER WINSLOW: Aye.

24 COMMISSIONER LESTER: Aye.

1 COMMISSIONER CONAWAY: Aye.

2 COMMISSIONER CLARK: Aye.

3 MR. CHERRY: Aye.

4 CHAIR McRAE: Opposed?

5 (No response.)

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C E R T I F I C A T E

STATE OF DELAWARE

NEW CASTLE COUNTY

I, Debra A. Donnelly, a Notary Public within and for the County and State aforesaid, do hereby certify that the foregoing Public Service Commission hearing was taken before me, pursuant to notice, at the time and place indicated, that the hearing was correctly recorded in machine shorthand by me and thereafter transcribed under my supervision with computer-aided transcription; that the transcript is a true record of the hearing; and that I am neither of counsel nor kin to any party in said action, nor interested in the outcome thereof.

WITNESS my hand and official seal this day of
January A.D., 2007.

DEBRA A. DONNELLY, RPR
CERTIFICATE #151-PS
EXPIRATION: PERMANENT